

AS

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 97-050-C - ORDER NO. 97-383
MAY 8, 1997

IN RE: Petition of Vanguard Cellular Systems,) ORDER
Inc. for Arbitration of its Inter-) ON
connection Agreement with Horry) ARBITRATION
Telephone Cooperative, Inc.)

This matter comes before the Public Service Commission of South Carolina ("Commission") on the Petition ("Petition") of Vanguard Cellular Systems, Inc. ("Vanguard") for arbitration of an interconnection agreement with Horry Telephone Cooperative, Inc. ("Horry") (Vanguard and Horry are collectively referred to herein as the "Parties"). The Petition was filed pursuant to the Telecommunications Act of 1996 (the "Act") (47 U.S.C.A. §252 et seq.). Vanguard filed its Petition on or about January 15, 1997, pursuant to §252(b) of the Act.

Upon the filing of the Petition, the Commission established a schedule and procedure for arbitration. See, Commission Order No. 97-248 dated March 26, 1997. The Parties in this matter filed testimony setting forth the outstanding issues to be arbitrated by the Commission. The Parties also filed lists of suggested examination questions with the Commission.

An arbitration hearing was held on this matter on April 28, 1997, in the Commission's hearing room. The Honorable Guy Butler,

Chairman, presided. Florence P. Belser, Staff Counsel, assisted the Commission with the examination during the hearing. B. Craig Collins, Esquire, and Paul C. Besozzi, Esquire, represented Vanguard; M. John Bowen, Esquire, and Margaret M. Fox, Esquire, represented Horry. Vanguard presented as witnesses Richard C. Rowlenon and Sandra Kiernan. Horry presented Brent Groome and M. O'Neal Miller, Jr. as its witnesses. After the hearing, both Parties submitted briefs for the Commission's consideration.

Section 252(a)(1) of the Act provides for voluntary negotiations between requesting carriers and incumbent local exchange carriers. The Act provides that if parties are unable to reach agreement on the terms of an appropriate interconnection agreement, then either party may request arbitration by the State Commission. Pursuant to §252(b)(4) of the Act, the State Commission shall resolve each issue set forth before the Commission.

Vanguard first requested interconnection with Horry on August 8, 1996. On January 3, 1997, Vanguard sent a draft Interconnection Agreement to Horry. The Act provides that "during the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues." 47 U.S.C.A. § 252(b)(1). Thereafter on January 15, 1997, Vanguard petitioned the Commission for arbitration pursuant to Section 252(b)(1). Vanguard's Petition set forth three (3)

unresolved issues on which it sought arbitration. The Act also provides that the Commission shall conclude the resolution of any unresolved issues not later than nine (9) months after interconnection was first requested of the local exchange carrier. See, 47 U.S.C.A. §252(b)(3)(C).

At the time of the hearing only one outstanding issue remained. As presented by the Parties at the hearing, the sole outstanding issue for the Commission to arbitrate is the appropriate reciprocal compensation rate for call transport and termination of traffic exchanged between Vanguard and Horry.¹ There is no dispute between the Parties that reciprocal compensation is required of the Parties or that §252(d)(2) is the appropriate pricing standard for establishing the reciprocal compensation rate.

The Commission notes that the instant arbitration proceeding is the first time this Commission has had before it an arbitration involving the sole issue of reciprocal compensation. The previous arbitration proceedings involved comprehensive general interconnection and unbundled service element agreements pursuant to Section 251(c) of the Act. Additionally, the instant proceeding marks the first time the Commission has addressed any

1. At the arbitration hearing, the Parties essentially agreed to all terms of mutual agreement, with the exception of the rate and one other provision of the agreement. With respect to the other provision of the agreement, the parties agreed to attempt to resolve that issue, and if a resolution is not possible, for each Party to submit a proposed provision regarding that issue to the arbitrator for determination of the appropriate provision.

type of interconnection involving a rural telephone company.²
The previous arbitration proceeding under the Act involved much larger local exchange companies.

At the hearing, Vanguard proposed that the Commission accept the Federal Communication Commission's ("FCC's") default proxy rates for call transport and termination. During questioning at the hearing, the Vanguard witness testified that Vanguard had negotiated interconnection agreements in South Carolina with BellSouth at \$0.01586 cents per minute and with General Telephone (GTE) at \$0.012 cents per minute. Horry, through supplemental testimony of witness Miller, submitted a one-page exhibit (Hearing Exhibit No. 2), which is entitled "Development of Reciprocal Compensation Rate" and which reflects in summary form Horry's 1995 costs as reported to NECA, to support Horry's proposed rate of \$0.037 per minute for call transport and termination. (See, Hearing Exhibit No. 2). The Horry witness also stated at the hearing that Horry currently charges other cellular carriers at the proposed rate of \$0.037 per minute. Vanguard submitted an analysis, performed by Charles River Associates, of the calculations of Horry's proposed rate. See, Hearing Exhibit No. 3. Vanguard asserts that its analysis supports the conclusion that Horry's calculations are based on historic costs, rather than on forward-looking incremental costs.

2. Horry is a rural telephone company as defined by the Act. Horry has less than 100,000 access lines and serves a limited geographic area.

In support of its proposed rate of \$0.037 per minute, Horry submits that its proposed rate is an appropriate cost-based rate and further that a reasonable approximation of the additional cost of serving Vanguard is the current cost per minute for transporting and terminating calls for other carriers. Vanguard takes the position that the Act requires a forward-looking incremental cost standard in determining the appropriate rate for reciprocal compensation. Vanguard asserts that Horry's proposed rate is based on an allocation of the total historic costs of the Horry network and is therefore an inappropriate standard on which to base the rate of reciprocal compensation. Vanguard proposes that the Commission require Horry to provide a cost proxy model that is based on a forward-looking incremental cost methodology such as the Total Element Long Run Incremental Cost ("TELRIC") methodology.

Section 252(d)(2) of the Act provides as follows:

- (2) Charges for transport and termination of traffic --
 - (A) In general. -- For the purposes of compliance by an incumbent local exchange carrier with section 251(b)(5), a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless --
 - (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of all calls that originate on the network facilities of the other carrier; and
 - (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.

The Commission notes that the Act does not prescribe a particular method to estimate costs. Vanguard's proposal that the TELRIC costing methodology be used is based upon the FCC's decision to use TELRIC and on this Commission's use of a TELRIC study in a prior arbitration proceeding.³ The Commission also notes that Vanguard did not provide any cost information regarding Vanguard's costs for terminating calls on Horry's network.

Upon a review of the Act and the evidence submitted at the hearing, the Commission holds that the reciprocal compensation rate shall be set at \$0.026 per minute for an interim rate and that Horry shall provide a verifiable costs study to the Commission within 90 days after the date of this Order. The interim rate shall be subject to true-up to reflect prices based on the cost study.

In setting the reciprocal compensation rate, the Commission is taking into consideration the rate submitted by Horry of \$0.037 per minute and the rate negotiated by Vanguard with BellSouth of \$0.01586 per minute. The Commission recognizes that Vanguard's negotiated rate with BellSouth reflects the current market conditions of a reciprocal compensation rate with a large local

3. The Commission is aware that the FCC Order requiring state commissions to apply the TELRIC standard has been stayed by the United State Court of Appeals for the Eighth Circuit. However, the Commission is also aware that nothing in the Eighth Circuit decision bars a state commission from adopting the TELRIC methodology of the commission's own volition. However, the Commission declines to require the TELRIC methodology herein. While the TELRIC methodology is not required by this Order, a cost study using a TELRIC method may be submitted if Horry so desires.

exchange company. Horry, as a much smaller company than BellSouth and as a rural telephone company, could reasonably be expected to incur somewhat higher costs than a larger company such as BellSouth. Given the fact that Vanguard has negotiated a \$0.01586 rate with a much larger local exchange company, the Commission finds that the lower proxy rates as proposed by Vanguard are not appropriate for Horry. As \$0.01568 is indicative of the market rate for a large local exchange company, then the proxy rates which are substantially below that market rate are certainly not appropriate for a much smaller rural telephone company.

The Commission finds that the interim rate, which will be subject to true-up to reflect cost study rates, should be set between the rate which Vanguard has negotiated with BellSouth (\$0.01586) and the rate proposed by Horry (\$0.037). Therefore, the Commission will set \$0.026 per minute as an interim rate, subject to true-up upon receipt of cost study rates, as reflective of current competitive market conditions for Horry.

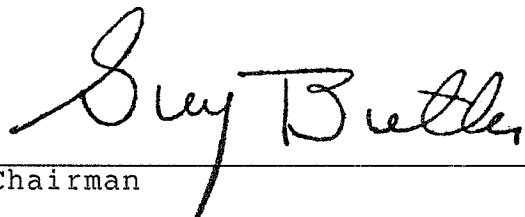
The Commission orders that Horry submit a verifiable cost study within 90 days of the date of this Order. The cost study shall be consistent with the Act and shall "determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls." 47 U.S.C.A. §252(d)(2)(A)(ii). Further, the cost study shall provide sufficient basis and documentation for review of the cost study. However, if the parties reach a negotiated rate before the expiration of the 90 days in which to file the cost study, then the Parties may file

that negotiated rate in lieu of the cost studies.

This Order shall remain in full force and effect until
further Order of the Commission.

IT IS SO ORDERED.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Deputy
Executive Director
(SEAL)